

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

United States of America,)	
)	
Plaintiff,)	
)	CRIMINAL NO. 3:00cr51
vs.)	
)	
Jason Travis O'Neal,)	
)	
Defendant.)	

Opinion and Order

Before the Court are defendant's Motion to Clarify how Title 18 U.S.C. § 924(e)/U.S.S.G. § 4B1.4 does not Apply (doc. #59) and Motion to Include Relevant Guideline to Instant Case Pending Resolution (doc. #60). As explained below, the Motions are **DENIED**.

On January 19, 2001, this Court sentenced defendant to 210 months imprisonment as an Armed Career Criminal, pursuant to 18 U.S.C. § 924(e) and United States Sentencing Commission Guidelines Manual § 4B1.4. The Eighth Circuit affirmed the conviction and sentence in its entirety. See United States v. O'Neal, 16 Fed. Appx. 539 (8th Cir. 2001). The defendant then filed a Motion to Vacate under 28 U.S.C. § 2255, which this Court denied. The defendant now tries to once again attack the constitutionality of his sentence in a self-titled Motion to Clarify.

In the interests of justice, the Court finds that it is

appropriate to construe the defendant's petition as a "successive" motion under § 2255 and summarily deny the defendant's request. A prisoner can only maintain a collateral challenge to his conviction or sentence by filing a motion with the trial court pursuant to § 2255. Hill v. Morrison, 349 F.3d 1089, 1091 (8th Cir. 2003).

Generally, the Court must warn the petitioner of the restrictions on second or successive motions and of the one-year limitations period under § 2255 before the Court can reclassify a pro se litigant's pleading as a § 2255 motion. Castro v. United States, 540 U.S. 375, 383 (2003); Morales v. United States, 304 F.3d 764, 767 (8th Cir. 2002). The Court must then give the defendant an opportunity to either consent to the reclassification or to withdraw his motion. Morales, 304 F.3d at 767.

However, this warning only applies to situations where a defendant has not previously sought relief under § 2255. See Castro, 540 U.S. at 384 (stating that the warning only applies when a court recharacterizes a pro se litigant's motion as a first § 2255 motion). Since the defendant in this case has already sought § 2255 relief in this Court, it is proper for the Court to construe the Motion as a successive motion to vacate his sentence pursuant to § 2255.

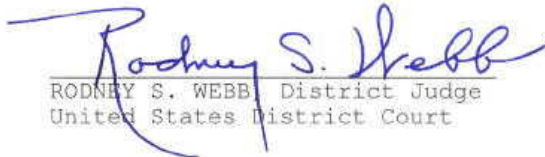
Since this is the petitioner's "second or successive" motion under § 2255, the Motion must be certified as provided in 28

U.S.C. § 2244 by a panel of the Eighth Circuit Court of Appeals. The defendant has obtained no such authorization from the Circuit. Accordingly, **IT IS HEREBY ORDERED** that the defendant's Motion to Clarify (doc. #59) is construed as a second or successive motion to vacate his conviction and sentence pursuant to 28 U.S.C. § 2255 and is **DENIED**.

The Court construes defendant's Motion to Include Relevant Guideline (doc. #60) as a supplement to defendant's previous Motion to modify his sentence under 18 U.S.C. § 3582 (doc. #58). The Court recently denied that Motion, and the defendant's supplement does not affect that decision. Accordingly, defendant's Motion to Include Relevant Guideline is **DENIED AS MOOT**.

IT IS SO ORDERED.

Dated this 11th day of July, 2006.


RODNEY S. WEBB, District Judge
United States District Court